IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) No. 3456 /2007

PETITIONER : Sanat Kumar, Son of Bhukhe Lal Rathore, aged about 45 years, resident of Village Jhafal, Tahasil Lormi, District Bilaspur (C.G.).

VERSUS

RESPONDENTS

1. Bare Lal, Son of Nathu Ram, aged about 65 years, Sarpanch, Gram Panchayat Jhafal, Tahasil Lormi, District Bilaspur (C.G.).
2. State of Chhattisgarh

   Through Collector, Bilaspur (C.G.).

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WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT/WRITS, ORDER/ORDERS, DIRECTION/DIRECTIONS ETC.

(58)

HIGH COURT OF CHHATTISGARH AT BILASPUR
WRIT PETITION (C) NO. 3456 of 2007

Petitioner		Sanat Kumar, Son of Bhukhe Lal Rathore, aged about 45 years, resident of Village Jhafal, Tahasil Lormi, District Bilaspur (C.G.)
	Versus	
Respondents	1.	Bare Lal, Son of Nathu Ram, aged about 65 years, Sarpanch, Gram Panchayat, Jhafal, Tahasil Lormi, District Bilaspur (C.G.)
	2	State of Chhattisgarh, Through Collector, Bilaspur (C.G.)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

Single Bench :- Hon'ble Shri Justice **Satish K. Agnihotri**

Present :- Shri Manoj Kumar Sinha , Advocate for the petitioner.

ORDER
(Passed on this 22nd day of June, 2007)

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner challenges the legality and validity of the impugned order dated 12.12.2006 (Annexure P/11) passed by the Additional District Judge, Mungeli, whereby and whereunder the application filed by the petitioner under Order 26, Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC") for appointment of the Commissioner was rejected.

2. The indisputable facts, in nutshell, are that the petitioner filed a civil suit for permanent injunction on 6.2.1995 before the Civil Judge Class-I, Mungeli against the respondent No. 1 restraining him from constructing the school building over the suit land. In the pending suit, the petitioner filed an application for appointment of Tahsildar, Lormi as Commissioner to investigate the suit land and submit a report. The Commissioner was appointed and he submitted his

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report on 17.4.2003. The petitioner filed the objection to the said report on 7.5.2003 (Annexure P/6). After having considered the report submitted by the Commissioner and objection of the petitioner, the Civil Judge Class-I, Mungeli, District Bilaspur, dismissed the suit by the judgment and order dated 7.12.2003 (Annexure P/7).

3. Being aggrieved and dissatisfied with the order, the petitioner preferred an appeal under Section 96, Order 41, Rule 1 of the CPC before the Additional District Judge, Mungeli. In the pending appeal, the petitioner again filed an application under Order 26, Rule 9 read with Section 151 of the CPC for appointing Commissioner to examine the status of the land and submit a report. The respondent No. 2 filed the objection to the said application.

4. The Additional District Judge, Mungeli, after having examined all the facts, came to the conclusion that the Commissioner has already been appointed during pendency of the suit and the suit has been dismissed after having considered all the facts including report of the Commissioner. The petitioner has not made out a case for appointing a Commissioner second time at appellate stage. Thus, the Additional District Judge, Mungeli dismissed the application filed by the petitioner vide order dated 12.12.2006 (Annexure P/11).

5. By this petition, the petitioner has not questioned the procedural error, infirmity or illegality in rejecting the application, except that the report submitted by earlier Commissioner does not indicate map and panchanama properly.

6. On perusal of the pleadings, judgments and documents appended thereto, I am of the considered opinion that the impugned order passed by the Additional District Judge, Mungeli is unexceptionable and does not warrant any interference.

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7. It is well settled principle of law that under Article 227 of the Constitution of India, this Court has jurisdiction of judicial review of the order passed by the Court below, in the event, there is manifest and apparent error on the face of the proceedings based on the clear ignorance or utter disregard to the provisions of law or there is grave failure of justice or grave injustice has occasioned thereby. Further, this Court can also entertain the petition in its supervisory jurisdiction if there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

8. As a result and for the reasons aforestated, this petition is dismissed, summarily.

Sd/-
Satish K.Agnihotri
Judge

B/-